

Message Text

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ACTION VOE-00

INFO OCT-01 ARA-10 ISO-00 CIAE-00 FBIE-00 INSE-00 NSAE-00

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R 182008Z OCT 76

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC 7985

UNCLAS BOGOTA 10647

E.O. 11652: N/A

TAGS: CVIS, CO

SUBJ: VISAS: ADVISORY OPINION: APPLICABILITY OF INFRACTIONS
OF INTERNAL REVENUE CODE SECTION 212 (A) (9)

IN RECENT WEEKS THE EMBASSY HAS HAD A NUMBER OF APPLICANTS
WHO HAVE COMMITTED INFRACTIONS OF THE INTERNAL REVENUE CODE
IN CONNECTION WITH INCOME TAX RETURNS FILED DURING THEIR
PERIOD OF ILLEGAL STATUS IN THE UNITED STATES. THE EMBASSY
REQUESTS THE DEPARTMENT'S ADVISORY OPINION ON THE FOLLOW-
ING TWO EXAMPLES:

(A) THE EMBASSY HOLDS THAT FILING OF A FRAUDULENT RETURN
IS A CRIME INVOLVING MORAL TURPITUDE. THE EMBASSY HOLDS
THAT THE APPLICANT CAN BE FOUND INELIGIBLE UNDER SECTION
212 (A) (9) WHEN HE ADMITS THAT HE HAS FILED A FRAUDULENT
RETURN. THE EMBASSY BELIEVES SUCH ADMISSION IS MADE WHEN THE
APPLICANT PRESENTS A RETURN IN CONNECTION WITH
HIS APPLICATION AND UNDER QUESTIONING ADMITS THAT SOME OF
THE DATA ON THE RETURN WAS INCORRECT AND THAT THIS FALSE
STATEMENT WAS MADE KNOWINGLY. THE EXAMPLES THE EMBASSY
HAS RECEIVED TO DATE INVOLVE THE CLAIMING OF FICTITIOUS OF
NON-EXISTENT DEPENDENTS. THE DEPARTMENT'S CONCURRENCE
IN THIS FINDING IS REQUESTED.

(B) IN CONTRAST, THE EMBASSY BELIEVES THAT FAILURE TO FILE
AN INCOME TAX RETURN, WHILE INVOLVING MORAL TURPITUDE,
IS A MISDEMEANOR AND NOT A FELONY.
HOWEVER, THE EMBASSY BELIEVES THAT FAILURE TO FILE TWO OR
MORE ANNUAL RETURNS CONSTITUTES MORE THAN ONE OFFENSE AND THEREFORE
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MAKES THE APPLICANT INELIGIBLE UNDER SECTION 212 (A) (9).

THE DEPARTMENT'S OPINION ON THIS POINT IS ALSO REQUESTED.
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